

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7235 of 2007

Krishna Knitwear Technology Ltd & Anr.. Petitioners
versus

State of Maharashtra & ors. .. Respondents

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Mr.C.U. Singh, Sr. Advocate a/w Ms.Soma Singh i/b
M/s.Paras Kuhad & Associates for the petitioner.

Mr.C.R. Sonawane AGP for respondent no.1.

Mr.A.Y. Sakhare, Sr. Advocate for respondent no.2.

Mr.J.S. Saluja i/b V.K. Tiwari for respondent no.3.

CORAM : S.B. MHASE AND

D.G.KARNIK, JJ

DATED : 29th September 2007

P.C.:

. Heard the counsel.

2. In view of the preliminary objection taken by respondent no.2 about the maintainability of the writ, learned counsel for the petitioners seek leave to withdraw the petition with liberty to file a suit.

He further submits protection for a week may be granted to the petitioners to enable them to file a suit and seek appropriate reliefs therein. The petitioners through their counsel undertake to renew the bank guarantee and keep the bank guarantee alive for a period of one month. Similarly, they also undertake not to withdraw any money from the escrow account for a month.

3. Mr.Saluja, learned counsel for respondent no.3 has no objection for extending the bank guarantee for a period of one week. Mr.Sakhare however objects for granting any interim relief on the ground that petitioners have committed breach of contractual obligations and therefore a decision was taken on 27th September 2007 for invocation of the bank guarantee. He also submits that injunction cannot be granted against encashment of a bank guarantee, and invites our attention to the recent decision of the Supreme Court in BSES Ltd. Vs. Fenner India Ltd. & Anr. reported in (2006) 2 SCC 728. It is true that injunction shall not ordinarily be granted against the encashment of a bank guarantee. However, the Supreme Court has also held that injunction can be granted in case of a fraud of which the bank has a notice and irretrievable injury is likely to be granted if the injunction is refused

and/or there exist special equities. In the present case, there is a pleading of a fraud. Whether the fraud is made or not and whether the bank has a notice thereof would be required to be gone in a suit, if filed by the petitioners. Same is the case in respect of the alleged irretrievable injury and the special equities. Since petitioner wants to file a suit and wants a protection for a limited period, we are inclined to grant protection for a period of one week especially in view of the fact that respondent no.1 has undertaken to keep the bank guarantee alive for a month.

4. For these reasons, we direct that the bank guarantee issued by respondent no.3 shall be alive for a period of one month from today. We also direct the respondents to maintain the status quo for a period of one week.

5. Petition is allowed to be withdrawn with liberty to follow the alternative remedy.

(D.G. KARNIK, J)

(S.B. MHASE, J)